Management Corporation Strata Title Plan No 460 v Goldhill Properties (Pte) Ltd & Ors

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NOS 19/88, 489/88, 490/88, 706/88, 1002/88 AND 1003/88
TAN TEOW YEOW JC
9 FEBRUARY 1991

Land Law — Strata title development — Meetings — Requisition for — Right of subsidiary proprietor — Effect of injunction and non-payment of arrears of maintenance contributions by lessees of subsidiary proprietor — Land Titles (Strata) Act (Cap 158, 1988 Ed), ss 3, 42, 60(7), 61, 63 & Third Schedule para 2(1)

Words and Phrases — 'Subsidiary proprietor'

This was an appeal from the decision of the assistant registrar in six originating summonses to determine whether the management corporation ('MC') was right in rejecting the requisition of and nomination of candidates by Goldhill Properties (Pte) Ltd ('GPPL'), Sunland Realty Pte Ltd ('SRPL') and Guan Seng Kee Pte Ltd ('GSKPL') who were subsidiary proprietors of the MC. Twelve originating summonses had originally been commenced between the parties. The dispute arose when GPPL who was the developer of the project and had, since March 1981, been appointed managing agent was given one month's notice of the termination of its services as managing agent in August 1987. GPPL commenced a suit seeking a declaration that the letter of termination by the MC was null and void. GPPL next requisitioned for an extraordinary general meeting ('EOGM') to replace the council member with their own nominees and a resolution preventing the MC from employing any other managing agent. In reply, the MC instituted a suit for a declaration that GPPL's termination was proper and an injunction to restrain GPPL from representing themselves as managing agent or interfering with the MC's discharge of duty or voting at any general meeting until payment of arrears in maintenance contribution. After obtaining an interim injunction, the MC gave notice of an EOGM which was, upon the application of GPPL, adjourned. When the injunction preventing GPPL from voting at any general meeting was lifted, two requisitions to reconvene the adjourned EOGM, the first by GPPL for resolutions to replace the existing council member and not to employ any other persons as managing agent, the second by GPPL and other subsidiary proprietors to replace the existing council members, again met with objections from the MC. The first requisition was met by one of the subject originating summons, seeking a declaration that the requisition was in contravention of the interim junction.

Two further originating summonses were issued by the MC when GPPL, SRPL and GSKPL each nominated one person for election to the council pursuant to the MC's notice convening the eighth annual general meeting ('AGM'). These originating summonses sought declarations that all the nominations were in contravention of the Land Titles (Strata) Act (Cap 158, 1988 Ed) ('the Act'). At the AGM, candidates nominated by GPPL, SRPL and GSKPL were kept out of the council.

A requisition by GPPL, SRPL and GSKPL to convene an EOGM to elect additional council members was again turned down on the ground that the proposed resolution contravened the Act. Following yet another requisition, the MC issued notices to convene an EOGM on 14 July 1988, but two days before the proposed EOGM, the MC demanded a sum of $16,757.48 as arrears in maintenance contributions owed by some of GPPL's lessees who held 999-year leases from GPPL. GPPL paid the arrears under protest. At the EOGM, GPPL's attempt to replace the secretary with its nominee again failed and GPPL subsequently started an originating summons seeking a refund of the sum of $16,757.48 plus interest and a declaration that the chairperson's dismissal of its resolution during the EOGM was null and void.

Held, dismissing the MC's appeals and allowing GPPL's appeal:

(1) The interim injunction issued by the High Court did not have the effect of preventing the MC from calling meetings by normal means for conducting business under the Act and did not, therefore, prevent the MC from complying with GPPL's requisitions to convene a meeting for resolutions to replace existing members of the council and to prevent the MC from employing any other person as managing agent.

(2) Under s 60(7) of the Act, each subsidiary proprietor may nominate one candidate. As GPPL, SRPL and GSKPL had each nominated one candidate for election to the council, their nominations were valid.

(3) Under the Act, a person who holds more than 21 years' unexpired lease is deemed a subsidiary proprietor. As GPPL had leased the units to another for 999-year leases, GPPL was not a subsidiary proprietor under s 42 of the Act who was liable for payment of contributions to the management fund, the non-payment of which would render the defaulting member ineligible to vote at any general meeting of the MC. GPPL was accordingly entitled to a refund of the sum of $16,757.48 paid.

(4) An EOGM in any organization enjoys the same status as an AGM. Thus, at any EOGM, council members may be elected as provided for under s 62(3)(c) of the Act or removed by ordinary resolution under s 61(1)(g).

Legislation referred to
Land Titles (Strata) Act (Cap 158, 1988 Ed) ss 3, 42, 60(7), 61, 63, Third Schedule para 2(1)

Wong Meng Meng (*Goh Kok Leong* with him) for the plaintiffs.
Raj Singam (*Randolf Khoo* with him) for the second defendant.
Cheong Yuen Hee (*Sum Chong Mun* with him) for the first and third defendants.

Cur Adv Vult

Tan Teow Yeow JC: The council of a management corporation under the Land Titles (Strata) Act (Cap 158, 1988 Ed) ('the Act') is not quite unlike the board of directors of a company or the executive committee of a country club, sometimes it has in it factions which compete for control of the council. The various interest groups within the Management Corporation Strata Title No 460 ('the MC') had also for one reason or another competed for the control of the MC through the control of the council. The unusual facts about the competition in this case is that it resulted in 12 separate legal actions taken out by the various parties. Six of them were the subject matter of the present appeals before me.

The facts

Goldhill Properties (Pte) Ltd ('GPPL'), who were a subsidiary proprietor of the MC, were appointed managing agent to manage the affairs of the MC since March 1981. They continued to be so appointed year after year until February 1987. GPPL were the developers of the project. They had sold and leased out some of the units and retained the other units to themselves.

In August 1987, GPPL was informed by the MC that their services as managing agent would be terminated with effect from 1 October 1987. GPPL started legal action in the High Court in Suit No 2574/87 on 28 September 1987 and sought a declaration that the letter of termination issued by the MC was null and void. Following that, both the MC and GPPL wrote letters to all subsidiary proprietors. The MC informed their subsidiary proprietors of the termination of GPPL as managing agent and GPPL informed the subsidiary proprietors of their wrongful termination.

On 5 October 1987, GPPL made a requisition to the MC to hold an extraordinary general meeting ('EOGM') in order to pass resolutions to replace existing council members with their own nominees and a resolution to prevent the MC from employing other persons as managing agent in place of GPPL, but on 9 October 1987, the MC instituted Suit No 2654/87 to seek a declaration that GPPL was properly terminated as managing agent of the MC and sought an injunction to restrain GPPL from presenting or purporting to present themselves as the MC's agent or interfering with the MC's discharge of their duties. They also sought, among others, an order to compel GPPL to deliver up to the MC all books and documents relating to the management and maintenance to the MC. The MC also sought to restrain GPPL from voting at any general meetings until they had paid up the arrears in maintenance contributions.

On 12 October 1987, the MC managed to obtain an interim injunction against GPPL in respect of their reliefs sought in Suit No 2654/87.

On 13 October 1987, the MC gave notice to convene GPPL's requested EOGM to be held on 20 October 1987. A few days later, that is on 17 October 1987, GPPL applied for an injunction to restrain the MC from convening the EOGM requested by GPPL as the interim injunction issued on 12 October 1987 contained an order restraining them from voting at any general meeting.

The interim injunction was heard on 16 November 1987 by the High Court. The High Court ordered that the interim injunction be continued, but the High Court lifted the order which restrained GPPL from voting at general meetings. The proposed EOGM that was to be convened on 20 October 1987 was ordered by the High Court on 19 October 1987, just a day before, to be adjourned to a date after the hearing of the injunction.

On 24 December 1987, GPPL again made a requisition to the MC to reconvene the adjourned EOGM to pass their requested resolutions, ie to replace the existing council members with their own nominees and a resolution not to employ other persons as managing agent.

On 11 January 1988, the MC commenced action in OS No 19/88 seeking a declaration from the High Court that GPPL's requisition for the convening of an EOGM was in contravention of the interim injunction issued earlier on 16 November 1987 by the High Court. A few weeks later on 2 February 1988, the MC rejected another request by GPPL and a few other subsidiary proprietors for the convening of another EOGM to replace the present council members.

The parties were quiet for a few months until May 1988 when the MC gave notice to convene the eighth annual general meeting ('AGM'). The fight for the control of the council resumed again. GPPL and a few other subsidiary proprietors sent in their nominations for election to the council on 12 May 1988 and 15 May 1988 to the MC.

The eighth AGM was held on 19 May 1988. On the same day the MC took out two originating summonses seeking declarations from the High Court that the nominations by GPPL and the few other subsidiary proprietors were in contravention of one provision or another of the Act. At the meeting itself, the same nominations by GPPL and a few others were ruled out of order by the chairperson. The candidates of GPPL and others were kept out of the council and the new council was elected to manage the MC.

On the next day, GPPL and others made a requisition to the MC to convene another EOGM in order to elect additional council members for the corporation. This requisition was again turned down by the MC on 1 June 1988 on the ground that the requisition's proposed resolution contravened yet another section of the Act. GPPL gave notice to the MC to convene another EOGM on 7 June 1988 following the MC's refusal on 1 June 1988.

On 21 June 1988, the MC on their own issued notices to subsidiary proprietors to convene an EOGM on 14 July 1988. Two days before the proposed EOGM, the MC demanded from GPPL a sum of $16,757.48 as arrears in maintenance contributions owed by some lessees of GPPL. The reason given was that was GPPL had a reversionary interest in these units, they were deemed subsidiary proprietors under the Act and were liable to pay up the arrears in maintenance contribu-

tions. The MC also informed GPPL that if they failed to pay up the arrears they would be barred from voting at the coming EOGM on 14 July 1988. GPPL paid up the arrears under protest on 14 July 1988.

At the meeting, one of GPPL's resolutions to remove the secretary of the council and to replace him with one of their own nominees was ruled out of order again by the chairperson for the alleged contravention of a provision of the Act.

On 20 July 1988, GPPL started an originating summons seeking a declaration that they were not liable to pay the $16,757.48 or alternatively that the MC should first try to recover the arrears from the registered lessees before demanding the arrears from GPPL. GPPL therefore sought a refund of the $16,757.48 plus interest of 8%. They also sought a declaration that the chairperson's dismissal of their resolution during the EOGM on 14 July 1988 was null and void.

Legal battles between the parties raged on right through to the end of 1989. The facts and events, however, do not concern the present six appeals that were before me. By the time the appeal came before me in early July 1990, GPPL had sold off all their units in the complex managed by the MC and it ceased to become a subsidiary proprietor. Most of the legal questions that were convassed before me with the exception of the refund of the $16,757.48 and the question of costs had become academic. Any ruling on my part would not affect any party's right for the control of the council. Although the second defendant, Sunland Realty Pte Ltd ('SRPL'), remained as a subsidiary proprietor, they owned only one unit in the complex. The entire episode, as was acknowledged by all the parties, was unfortunate.

I will now examine each and every action under appeal separately.

Originating Summons No 19/88

This originating summons was taken out by the MC for a declaration that the requisition by GPPL for the MC to convene an EOGM to pass five resolutions was contrary to the injunction order issued by the High Court on 16 November 1987 and another declaration that the MC need not convene an EOGM as requested. The argument advanced by the MC on this originating summons was that the requisition sought in substance has the effect of nullifying the interim injunction issued by the High Court. The first three resolutions sought to replace the existing council members with new nominees and resolution numbers four and five (ie resolutions to prevent the MC from employing others as their managing agent), it was argued, contravened para 1(a) of the order of court restraining GPPL from acting or holding themselves out as the managing agent of the MC. I do not agree with this argument. The interim injunction issued by the High Court does not have the effect of preventing the MC from calling meetings by normal means to transact any business under the Act.

The assistant registrar who heard the application made no order on it. The MC appealed against his decision for the reasons stated above.

The appeal was dismissed with costs. The MC should bear the costs of the proceedings under this originating summons without any contribution from GPPL.

Originating Summons Nos 489/88, 490/88, 1002/88 and 1003/88

These four originating summonses were taken out by the parties to determine only one question, ie whether the MC was right in rejecting the nominations by GPPL, SRPL and one other subsidiary proprietor. These concerned the nomination letters and forms sent in by these three subsidiary proprietors to stand for election for the council at the eighth AGM. The learned assistant registrar who heard the applications decided in favour of GPPL and ruled that the council was wrong in rejecting the nomination papers submitted by GPPL. The MC appealed.

From a reading of the three letters and three nomination forms forwarded to the secretary of the MC, it was clear to me that each subsidiary proprietor had nominated only one candidate. The MC had deliberately placed obstacles and raised technical issues in order to block the nomination of candidates by the three subsidiary proprietors. That being my ruling, it is not necessary for me to go into the various legal arguments whether the Act allows one subsidiary proprietor to nominate more than one candidate. The three subsidiary proprietors here had not contravened s 60(7) of the Act as each of them had only nominated one candidate. The four appeals by the MC are therefore dismissed. The costs of these four applications, including the costs for the present appeals, should be borne by the MC without any contribution from the three subsidiary proprietors who were cited by them.

Originating Summons No 706/88

This originating summons was taken out by GPPL to determine the question whether they are liable under the Act to pay the arrears of maintenance contributions by some of their lessees. Following their 'defeat' at the eighth AGM, GPPL, with their substantial voting rights, again compelled the MC to convene another EOGM. The MC had no choice but to respond. This they did on 14 July 1988. Before the MC convened the EOGM they wrote to GPPL and demanded for this sum of arrears. The amount was paid by GPPL under protest

and this originating summons was taken out by them for a declaration that the demand for this sum from them was bad as they were not liable under the Act to pay the arrears for their lessees with long leases. Alternatively they claimed that the MC should first make the demand and claim the said sum from the registered lessees first. GPPL also sought another declaration that the dismissal of their resolution proposed at the eighth AGM by the chairperson was null and void.

The learned assistant registrar who heard the applications dismissed all reliefs prayed for except one. He decided that the chairperson at the AGM was wrong in dismissing GPPL's proposed resolution. GPPL appealed against the ruling of the learned assistant registrar in all but one and the MC appealed against that ruling of the learned assistant registrar that was against them.

There are two issues before me in this appeal. First, whether GPPL still continued to be a subsidiary proprietor of those lots that they had sold and were liable to pay the arrears of those lessees who had defaulted in their contributions to the management fund. Secondly, whether the MC was wrong in rejecting the resolution proposed by GPPL.

Under s 42 of the Act, subsidiary proprietors are liable to contributions to the management fund and under para 2(1) of the Third Schedule, those subsidiary proprietors who defaulted in their contributions are not entitled to vote at any general meeting of the MC. The term 'subsidiary proprietor' is defined in s 3 of the Act as follows:

> 'subsidiary proprietor' means —
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> (a) the registered subsidiary proprietor for the time being of the entire estate in a lot including an estate for life, an estate in remainder or an estate in reversion; and
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> (b) in relation to a lot where a lease has been granted, the registered subsidiary proprietor for the time being of a leasehold interest in a lot described in an instrument of lease whose unexpired term is not less than 21 years as from the date of lodgment of the instrument of lease for registration with the Registrar including such a lease registered prior to 1 December 1987.

From the definition it is to be noted that any lessee with more than 21 years' unexpired lease shall be deemed to be subsidiary proprietor under the Act. Counsel for the MC contended that as GPPL had a reversionary interest in those units they should be deemed to be the subsidiary proprietors and would therefore be liable to pay contributions in case of the default of the lessees. I do not accept this argument. It is absurd to suggest that under the scheme of the Act a lessor who had sold the unit to another with a 999-year lease can still remain a subsidiary proprietor under the Act and be liable to contributions in the event of the default of the lessees. That being my ruling, the appeal by GPPL must be allowed and that the said sum of $16,757.48 with interest must be refunded to GPPL. The MC should have proceeded to recover those sums of money from the lessees in occupation in the first place and not to use the default as a pretext to block GPPL from voting at the EOGM.

As to the issue whether the chairperson was right in dismissing the resolution proposed by GPPL at the EOGM on 14 July 1988, it is my ruling that she was not entitled to do so. An EOGM in any organization enjoys the same status as an AGM, but for the fact that it is convened for some special business of the organization. It is also absurd to suggest that council members can only be elected at an AGM and not otherwise.

Under s 62(3)(c) of the Act, the management corporation may in a general meeting, appoint a person to fill the offices of the chairman, the secretary or the treasurer of the council; the management corporation may also remove any council member from his office by an ordinary resolution under s 61(1)(g) of the Act. The act of the chairperson at the EOGM of 14 July 1988 is again another example to illustrate the MC's method of using technical objections to block GPPL from gaining control of the council. I would therefore dismiss the appeal by the MC on this particular issue.

On the question of costs, the MC should likewise be made to bear the costs of these proceedings without any contribution from GPPL. Costs, however, cannot be ordered against the second defendant, ie Wong Chiang Hong, the then secretary to the MC personally, as it has not been demonstrated why he alone should be made liable personally to bear the costs and not others.

The provisions and the rules provided under the Act were intended by the legislature to set up a scheme to promote good neighbourliness in high-rise buildings. These provisions and rules are not meant to be made use of as weapons for neighbours to litigate against each other. It is sad that the scheme had been badly misused in this present case. I was urged by counsel for the MC to bear in mind when awarding costs that the MC was a 'voluntary organization' and who had not acted improperly. After considering the whole episode, I found myself unable to agree with him. Full costs should accordingly be borne by the MC as ordered by me above.

Order accordingly.

Solicitors: *Shook Lin & Bok; Ang & Partners; Drew & Napier; YH Cheong; Sim Hill Tan & Wong.*

Reported by *Rosalind Tan*